

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re Marriage of)	NO. 63214-1-I
)	
CHERYL J. KOOPS,)	DIVISION ONE
)	
Respondent,)	
and)	
)	
ROBERT E. KOOPS,)	UNPUBLISHED OPINION
)	
<u>Appellant.</u>)	FILED: March 8, 2010

Lau, J. — Robert Koops appeals the trial court’s award of \$500 per month in maintenance to his former wife, Cheryl Koops, for approximately four years. Because he fails to establish any abuse of the trial court’s discretion, we affirm.

FACTS

Robert and Cheryl Koops married in March 1975 and separated in July 2007. Cheryl filed a petition for dissolution of the marriage, seeking a property division and maintenance award in Skagit County Superior Court. After trial, the trial court gave an oral ruling detailing its findings regarding the character and division of the couple’s property. Of the total of \$1,180,000 in separate and community property, the trial court determined that “the wife should have \$525,000, and the husband should have \$655,000.” Verbatim Report of Proceed (VRP) (Oct. 16, 2008) at 14. At that hearing on October 16, 2008, in order to divide the property, the trial court directed Robert to

sell the family residence and transfer \$311,333 of the proceeds to Cheryl. The trial court stated, "I am not requiring maintenance if it sells by January 15th. If it doesn't sell by January 15th, he will commence thereafter paying maintenance in the amount of \$750 per month . . . until it sells[.]" VRP (Oct. 16, 2008) at 15.

Before January 15, Robert refinanced the family residence and cashed certificates of deposit to pay Cheryl nearly \$311,000. On February 18, 2009, the trial court signed written findings of fact regarding maintenance.

The husband indicates he wishes to retire at age 62. He testified that he has numerous health problems, including Type 2 diabetes which is progressing to Type 1 diabetes. He also testified that he may not be able to retire, depending upon the decision of the court in this case. The husband earns more than the wife. He has been employed as a truck driver at Janicki Industries and earns \$20.01 per hour. His monthly social security benefit will be \$1200/month, and the wife's will be \$650/month. The wife will also be getting the husband's pension from Janicki Industries in the projected amount of \$440.36/month. The husband receives \$200/month from his North Dakota property.

The wife recently changed jobs as a result of being let go from her previous job. She testified that she works as a maintenance worker at United General Hospital, earning \$14/hour, since trial, the wife is unemployed.

The wife had indicated she wished to retire at age 62.

The husband turned 62 on October 20, 2008. The wife will be 62 on June 16, 2009.

Maintenance should be ordered per the decree herein.

The trial court also struck the following two statements originally included in the findings regarding maintenance: "Both of the parties work full time," and "No maintenance is is [sic] awarded in this case given the health of the parties, their nearness to retirement age, and the property awarded which includes \$310,828 to the wife and the husband's pension of \$61,908, with a projected monthly income of \$440.36."

The dissolution decree states: “Husband shall pay \$500 monthly to the wife as maintenance from 3/1/09 until the month in which wife reaches her 66th birthday.”

Robert appeals the maintenance award.

DISCUSSION

A trial court may grant a maintenance order for either spouse in a dissolution proceeding “in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors” RCW

26.09.090. These factors include:

- (a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;
- (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;
- (c) The standard of living established during the marriage . . . ;
- (d) The duration of the marriage . . . ;
- (e) The age, physical and emotional condition, and financial obligations of the spouse . . . seeking maintenance; and
- (f) The ability of the spouse . . . from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse . . . seeking maintenance.

RCW 26.09.090(1)(a)–(f). However, “Nothing in RCW 26.09.090 requires the trial court to make specific factual findings on each of the factors listed in RCW 26.09.090(1).”

Mansour v. Mansour, 126 Wn. App. 1, 16, 106 P.3d 768 (2004).

We review a trial court’s maintenance award for abuse of discretion. In re Marriage of Mueller, 140 Wn. App. 498, 510, 167 P.3d 568 (2007). Given our reluctance to encourage appeals by “tinkering” with the difficult decisions made by trial

courts in dissolution actions, we will affirm such a decision “unless no reasonable judge would have reached the same conclusion.” In re Marriage of Landry, 103 Wn.2d 807, 809–10, 699 P.2d 214 (1985).

Relying on In re Marriage of Matthews, 70 Wn. App. 116, 853 P.2d 462 (1993), Morgan v. Morgan, 59 Wn.2d 639, 369 P.2d 516 (1962), and In re Marriage of Monkowski, 17 Wn. App. 816, 565 P.2d 1210 (1977), Robert contends that the trial court failed to consider and make sufficient findings on the factors listed in RCW 26.09.090. These cases are distinguishable.

In Matthews, the court ordered the husband, for an indefinite amount of time, to pay nearly two-thirds of his monthly salary in maintenance to the wife, despite the fact that he had no significant personal property and she had received the equity from the sale of the family home and had income from a part-time job. Matthews, 70 Wn. App. at 123-24. Because it appeared that the husband did not have the ability to meet his needs while meeting the obligations imposed by the trial court and because the trial court overlooked the effect of the indefinite term of the maintenance obligation on the husband’s potential disability or retirement income, Division III remanded the maintenance award to the trial court for reconsideration. Matthews, 70 Wn. App. at 124–25.

In Morgan, the trial court ordered the husband to pay alimony for an indefinite period of time without finding that the wife needed the payment. Morgan, 59 Wn.2d at 643. Because neither the conjectural possibility of a future change in circumstances nor the standard of living the wife enjoyed during the marriage justified an award of

alimony, the Supreme Court reversed the order of alimony. Morgan, 59 Wn.2d at 643–44.

In Monkowski, this court reversed the trial court’s award of maintenance based on a finding that stated simply that the wife should be awarded \$1,000 per month for 10 years. Monkowski, 17 Wn. App. at 818–19.

But here, the findings demonstrate that the trial court explicitly considered the parties’ ages, current and expected incomes, and retirement plans. The record also demonstrates that the trial court was aware of the duration and standard of living of the marriage, the parties’ work histories and relative earning power, the relative amounts received by each party in the property division, as well as the expenses and obligations claimed by each party. The fact that the trial court struck language regarding the cash Cheryl received in the property division from the findings indicates that the trial court considered the parties’ current and expected incomes after retirement to be the key factor justifying maintenance. On this record, we cannot say that the trial court failed to consider the relevant statutory factors when making its maintenance award.

Robert next argues that the record does not support a finding that Cheryl needed an additional \$500 per month in maintenance since she received \$310,000 in cash in the property division. Essentially, Robert argues that a trial court abuses its discretion by ordering maintenance whenever the party seeking maintenance receives a large amount of cash in the property division. None of the cases Robert cites requires such a conclusion. Rather, the trial court has broad discretion to use maintenance as “a flexible tool by which the parties’ standard of living may be

equalized for an appropriate period of time.” In re Marriage of Washburn, 101 Wn.2d 168, 179, 677 P.2d 152 (1984).

Similarly, Robert claims that the trial court abused its discretion by ordering maintenance without exploring the reasons for Cheryl’s unemployment. But as our Supreme Court has stated, “[U]nder the extremely flexible provisions of RCW 26.09.090, a demonstrated capacity of self-support does not automatically preclude an award of maintenance. Indeed, the ability of the spouse seeking maintenance to meet his or her needs independently is only one factor to be considered.” Washburn, 101 Wn.2d at 178–79.

Robert contends that the maintenance award was not just because Cheryl received a large amount of cash and additional liquid assets while he had a new mortgage payment, reduced income because his employer reduced his hours, and increased medical costs, in addition to the costs of maintaining the properties he received in the property division. But as Cheryl points out, Robert, who is, as the trial court stated, “capable of earning a better living” than Cheryl, (VRP (Oct. 16, 2008) at 5), left their marriage of long duration with a steady income and a \$655,000 share of the couple’s property, while Cheryl received a \$525,000 share and is unemployed. Under these circumstances, Robert fails to demonstrate that the trial court’s award of \$500 per month over a period of slightly more than four years is unjust.

Finally, Robert argues that Cheryl should have been estopped from requesting and receiving maintenance because she agreed to accept cash from him for her share of the family residence before the trial court’s January 15 deadline for his sale of the

home. To establish his equitable estoppel claim, Robert must show that he reasonably relied on Cheryl's prior statement, admission, or act; that the prior statement is inconsistent with a later assertion by Cheryl; that such reliance was reasonable; and that the reliance was justifiable and to his detriment. Parry v. Windmere Real Estate/East, Inc., 102 Wn. App. 920, 929, 10 P.3d 506 (2000).

The trial court ordered Robert to sell the family home and pay Cheryl over \$311,000 from the sale as part of her \$525,000 share of the couple's property. The trial court specifically stated at the hearing that the \$750 per month payment after January 15 was designed to "make sure that he's really motivated to sell." VRP (Oct. 16, 2008) at 18. Rather than sell the home in a weak market, Robert decided to mortgage the property and pay Cheryl her share. Robert appears to argue that by accepting the cash when the home had not yet been sold as the trial court ordered, Cheryl agreed that she did not need \$750 per month in maintenance. Nothing in the record supports such a conclusion. Robert fails to identify any other statement, admission, or act by Cheryl that is inconsistent with her initial request for maintenance included in her petition for dissolution. Under these circumstances, Robert's equitable estoppel claim fails.¹

Cheryl requests attorney fees under RCW 26.09.140, arguing that Robert's

¹ To the extent Robert attempts to rely on any oral ruling at the hearing that the trial court did not intend to order maintenance, such a verbal expression of informal opinion at the time is not binding here because it was not incorporated into the written findings. DGHI Enters. v. Pacific Cities, Inc., 137 Wn.2d 933, 944, 977 P.2d 1231 (1999).

appeal has relatively low merit and that she received less in the property division and has limited earning capacity. We note that the trial court did not make an award of attorney fees below, and we exercise our discretion under RCW 26.09.140 to deny Cheryl's request for attorney fees.

WE CONCUR:

Dwyer, A.C.J.

Johnson, J.
Edenborn, J.